

Calendar No. 36

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 106-13

NURSING HOME RESIDENTIAL SECURITY ACT OF 1999

MARCH 10, 1999.—Ordered to be printed

Mr. ROTH, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 494]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 494) to amend title XIX of the Social Security Act to prohibit transfers or discharges of residents of nursing facilities as a result of a voluntary withdrawal from participation in the Medicaid program, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

I. SUMMARY AND BACKGROUND

A. SUMMARY

S. 494, as reported by the Committee on Finance, provides for the addition of a new section to the transfer and discharge requirements for nursing facilities participating in the Medicaid program. This new section requires facilities withdrawing from Medicaid to continue to care for current residents under the terms and conditions of the Medicaid program until those residents no longer require care.

B. BACKGROUND AND REASON FOR LEGISLATION

Nearly 90 percent of all nursing homes participate in the Medicaid program. Decisions to withdraw from the program are very rare and usually result from facilities closing entirely.

However, there have been a few isolated incidents of facilities deciding to convert to a purely private-pay clientele and in the proc-

ess maneuvering to displace current residents who rely on Medicaid. Last year, *The Wall Street Journal* documented several cases of nursing home evictions across the Nation. One particularly egregious case occurred in Tampa, Florida, where a nursing home attempted to evict 52 Medicaid beneficiaries under the guise of emptying its facility for remodeling. Nursing homes are often elderly residents' final homes, and abrupt removals can be quite traumatic.

S. 494 does not interfere with the ability of a nursing home to withdraw from Medicaid. But when a still functioning facility decides to stop serving Medicaid clients, S. 494 will ensure that current residents do not find themselves scrambling to identify new care alternatives.

C. LEGISLATIVE HISTORY

S. 494 was introduced on March 2, 1999, by Senators Graham, Grassley, Roth, and Moynihan. The bill was considered in a Committee on Finance markup on March 4, 1999, and was ordered reported favorably by a recorded vote of 12-0, with an additional 6 votes in support, by proxy.

II. EXPLANATION OF THE BILL

Prior and Present Law

Nursing facilities that choose to participate in the Medicaid program must comply with certain requirements relating to patients' rights as set forth in section 1919 of the Social Security Act. These requirements include transfer and discharge procedures. Generally, a nursing facility may not transfer or discharge a resident of a participating facility unless the transfer or discharge is necessary for the resident's welfare, or because the resident's health has improved enough to leave the facility, or unless the safety or health of others in the facility is endangered, or for non-payment for services, or if the facility ceases to operate. Various documentation and notice requirements apply to transfers or discharges that are permitted under the Medicaid statute. Current law does not extend any transfer or discharge protections to Medicaid residents or other residents in a nursing facility if the facility withdraws from participation in the Medicaid program.

Explanation of Provision

The Committee provision would add a new section to the transfer and discharge requirements for nursing facilities participating in the Medicaid program. This new section sets forth the rights of residents in a facility in a case where the facility voluntarily withdraws from participation in the Medicaid program, but continues to provide nursing care services. The facility may not transfer or discharge any resident, whether or not Medicaid recipients, solely because of its withdrawal from Medicaid participation. All Medicaid participation agreement requirements continue to apply to all individuals who were residents of the facility on the day before the day the facility withdrew from the Medicaid program, until such individuals no longer require care.

A nursing facility must advise individuals who enter the facility after the facility has voluntarily withdrawn from the Medicaid program that the facility is not participating in Medicaid, and that the facility may discharge the resident from the facility if the resident becomes eligible for Medicaid. This notice must be given to a new resident orally and in writing, and the facility must obtain a written acknowledgment of the receipt of such information at the time he or she becomes a resident.

Effective Date

Date of enactment.

III. BUDGET EFFECTS OF THE BILL

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office on the budgetary impact of the legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 8, 1999.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 494, the Nursing Home Residential Security Act of 1999.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 494—Nursing Home Residential Security Act of 1999

(As ordered reported by the Senate Committee on Finance on March 4, 1999)

CBO estimates that enactment of S. 494 would not affect federal spending. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. S. 494 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UNMA) and would not affect the budgets of state, local, or tribal governments. The bill does contain a private-sector mandate on nursing facilities currently participating in the Medicaid program, but the cost of that mandate to the affected facilities would be small.

S. 494 would amend Medicaid law to prohibit transfers or discharges of residents of nursing facilities as a result of a facility's voluntary withdrawal from participation in the Medicaid program. The bill would not affect federal Medicaid spending because nursing facility residents would be likely to continue to receive Medic-

aid benefits if a facility withdraws from the program under both current law and the bill's new requirements.

Current Medicaid law includes a set of requirements regarding residents' transfer and discharge rights for nursing facilities that participate in the Medicaid program and establishes mechanisms that states and the federal government may use to punish violation of those requirements. The bill would add a new requirement that a participating facility agree that in the event that it decides to withdraw from the Medicaid program in the future, it would continue to care for residents who were in its care at the time. In that instance, the facility would be deemed to be participating in the Medicaid program and would continue to receive payments for residents who were in its care at the time of withdrawal until the legal discharge or transfer of those residents. The requirement would apply only to facilities that continue to provide nursing facility services.

CBO estimates that this bill would not affect federal Medicaid spending. Because nursing facilities are highly dependent on Medicaid revenue, it is unlikely that there would be a large-scale withdrawal from Medicaid program participation under current law. Furthermore, in many states, withdrawal from the Medicaid program carries risk of civil monetary penalties or other sanction. For instance, some states require Medicaid participation as a condition of licensure. Even in the rare instance where a facility does withdraw from the program under current law, the state or the Health Care Financing Administration would likely find new placement for Medicaid-eligible residents. As national occupancy rates in nursing facilities are about 86 percent, it would be unlikely that a new placement would not be found.

CBO finds that the new requirements of S. 494 would be considered a private-sector mandate under UMRA. For facilities now participating in Medicaid that chose to leave the program, the requirement to continue to care for current residents would be a new duty they could not avoid, even though it was not part of their agreement when they joined the program. Because few nursing facilities leave the program, however, and because those who did choose to leave would continue to receive Medicaid payments, the aggregate cost to affected facilities of this mandate would be small.

IV. VOTE OF THE COMMITTEE

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S. 494 was ordered reported favorably by a recorded vote of 12-0, with an additional 6 votes in support, by proxy.

V. REGULATORY IMPACT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the possible regulatory impact that might be incurred in carrying out the bill as reported.

Impact on Businesses

The bill, which has received the endorsement of the nursing home industry, requires facilities withdrawing from the Medicaid program to continue to comply with Medicaid regulations, including those related to nursing home survey and certification, until current residents covered by Medicaid no longer require care. Accordingly, nursing homes will remain subject to Medicaid regulations longer than if they were able to immediately withdraw fully from participation in the program.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS—

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SEC. 1919. REQUIREMENT FOR NURSING FACILITIES.

* * * * *

(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

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(2) TRANSFER AND DISCHARGE RIGHTS.—

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(F) CONTINUING RIGHTS IN CASE OF VOLUNTARY WITHDRAWAL FROM PARTICIPATION.—

(i) IN GENERAL.—In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this title but continues to provide services of the type provided by nursing facilities—

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a

separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) INFORMATION FOR NEW RESIDENTS.—The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this title with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this title.

(iii) CONTINUATION OF PAYMENTS AND OVERSIGHT AUTHORITY.—Notwithstanding any other provision of this title, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility’s voluntary withdrawal from participation under the State plan for purposes of—

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this title; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) NO APPLICATION TO NEW RESIDENTS.—This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

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